

HONORABLE RONALD B. LEIGHTON

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

NOEL A. SALDANA AND [REDACTED]
SALDANA, husband and wife and their
marital community,

Plaintiffs,

v.

CITY OF LAKEWOOD, a municipal
corporation, and JAMES SYLER, in his
official capacity and individual capacity and
JANE DOE SYLER, and their marital
community,

Defendants.

No. 3:11-cv-06066 -RBL

**AMENDED ANSWER TO
PLAINTIFFS' COMPLAINT FOR
DAMAGES**

DEMAND FOR JURY

In Amended Answer to *Plaintiffs' Complaint for Damages*, unless specifically
admitted herein, Defendants City of Lakewood and James Syler and Jane Doe Syler deny
each and every allegation therein.

I. PARTIES

1.1 Defendants are without knowledge or information sufficient to form a belief
as to the truth of Plaintiffs' allegations contained in paragraph 1.1 of *Plaintiffs' Complaint
for Damages* and therefore deny the same.

1.2 Defendants admit that the City is a municipal corporation formed and

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operating under the laws of the State of Washington, and was the employer of Defendant Syler. Defendants deny all remaining allegations contained in paragraph 1.2 of *Plaintiffs' Complaint for Damages*.

1.3 Defendants deny the allegations contained in paragraph 1.3 of *Plaintiffs' Complaint for Damages*.

II. JURISDICTION AND VENUE

2.1 Defendants deny the allegations contained in paragraph 2.1 of *Plaintiffs' Complaint for Damages*.

2.2 Defendants deny the allegations contained in paragraph 2.2 of *Plaintiffs' Complaint for Damages*.

III. FACTS

3.1 Defendants admit the allegations contained in paragraph 3.1 of *Plaintiffs' Complaint for Damages*. Defendants further admit that Plaintiff had kicked in the door of his ex-wife's residence and was assaulting her, as he had done previously.

3.2 Defendants deny the allegations contained in paragraph 3.2 of *Plaintiffs' Complaint for Damages*.

3.3 Defendants admit that Mrs. Saldana told Mr. Saldana that she was contacting the police and Mr. Saldana fled the premises. Defendants are without knowledge or information sufficient to form a belief as to the remaining allegations contained in paragraph 3.3 of *Plaintiffs' Complaint for Damages* and therefore deny the same.

3.4 Defendants deny the allegations contained in paragraph 3.4 of *Plaintiffs' Complaint for Damages*.

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1 3.5 Defendants deny the allegations contained in paragraph 3.5 of *Plaintiffs'*
2 *Complaint for Damages*.

3 3.6 Defendants deny the allegations contained in paragraph 3.6 of *Plaintiffs'*
4 *Complaint for Damages*.

5 3.7 Defendants are without knowledge or information sufficient to form a belief
6 as to the truth of Plaintiffs' allegations contained in paragraph 3.7 of *Plaintiffs' Complaint*
7 *for Damages* and therefore deny the same.

8 3.8 Defendants are without knowledge or information sufficient to form a belief
9 as to the truth of Plaintiffs' allegations contained in paragraph 3.8 of *Plaintiffs' Complaint*
10 *for Damages* and therefore deny the same.

11 **CLAIMS AND CAUSES OF ACTION**

12 **IV. VIOLATION OF PLAINTIFF'S CIVIL RIGHTS UNDER 42 U.S.C. §1983**

13 4.1 Defendants deny the allegations contained in paragraph 4.1 of *Plaintiffs'*
14 *Complaint for Damages*.

15 4.2 Defendants deny the allegations contained in paragraph 4.2 of *Plaintiffs'*
16 *Complaint for Damages*.

17 4.3 Defendants deny the allegations contained in paragraph 4.3 of *Plaintiffs'*
18 *Complaint for Damages*.

19 4.4 Defendants deny the allegations contained in paragraph 4.4 of *Plaintiffs'*
20 *Complaint for Damages*.

21 4.5 Defendants deny the allegations contained in paragraph 4.5 of *Plaintiffs'*
22 *Complaint for Damages*.

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V. NEGLIGENCE

5.1 Defendants deny the allegations contained in paragraph 5.1 of *Plaintiffs' Complaint for Damages*.

5.2 Defendants deny the allegations contained in paragraph 5.2 of *Plaintiffs' Complaint for Damages*.

5.3 Defendants deny the allegations contained in paragraph 5.3 of *Plaintiffs' Complaint for Damages*.

5.4 Defendants deny the allegations contained in paragraph 5.4 of *Plaintiffs' Complaint for Damages*.

5.5 Defendants deny the allegations contained in paragraph 5.5 of *Plaintiffs' Complaint for Damages*.

VI. NEGLIGENCE [sic] USE OF EXCESSIVE FORCE

6.1 Defendants deny the allegations contained in paragraph 6.1 of *Plaintiffs' Complaint for Damages*.

6.2 Defendants admit that, at all times relevant herein, the City of Lakewood, by and through the Lakewood Police Department, was the employer of Officer Syler, and the officer was acting within the scope of employment. Defendants deny the remaining allegations contained in paragraph 6.2 of *Plaintiffs' Complaint for Damages*.

6.3 Defendants deny the allegations contained in paragraph 6.3 of *Plaintiffs' Complaint for Damages*.

6.4 Defendants deny the allegations contained in paragraph 6.4 of *Plaintiffs' Complaint for Damages*.

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6.5 Defendants deny the allegations contained in paragraph 6.5 of *Plaintiffs' Complaint for Damages*.

VII. INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS

7.1 Defendants deny the allegations contained in paragraph 7.1 of *Plaintiffs' Complaint for Damages*.

7.2 Defendants admit that, at all times relevant herein, the City of Lakewood, by and through the Lakewood Police Department, was the employer of Officer Syler, and the officer was acting within the scope of employment. Defendants deny the remaining allegations contained in paragraph 7.2 of *Plaintiffs' Complaint for Damages*.

7.3 Defendants deny the allegations contained in paragraph 7.3 of *Plaintiffs' Complaint for Damages*.

7.4 Defendants deny the allegations contained in paragraph 7.4 of *Plaintiffs' Complaint for Damages*.

VIII. NEGLIGENT INFLICTION OF EMOTIONAL DISTRESS

8.1 Defendants deny the allegations contained in paragraph 8.1 of *Plaintiffs' Complaint for Damages*.

8.2 Defendants admit that, at all times relevant herein, the City of Lakewood, by and through the Lakewood Police Department, was the employer of Officer Syler, and the officer was acting within the scope of employment. Defendants deny the remaining allegations contained in paragraph 8.2 of *Plaintiffs' Complaint for Damages*.

8.3 Defendants deny the allegations contained in paragraph 8.3 of *Plaintiffs' Complaint for Damages*.

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8.4 Defendants deny the allegations contained in paragraph 8.4 of *Plaintiffs'*
Complaint for Damages.

IX. STRICT LIABILITY

9.1 Defendants deny the allegations contained in paragraph 9.1 of *Plaintiffs'*
Complaint for Damages.

9.2 Defendants deny the allegations contained in paragraph 9.2 of *Plaintiffs'*
Complaint for Damages.

X. ASSAULT AND BATTERY

10.1 Defendants deny the allegations contained in paragraph 10.1 of *Plaintiffs'*
Complaint for Damages.

10.2 Defendants deny the allegations contained in paragraph 10.2 of *Plaintiffs'*
Complaint for Damages.

10.3 Defendants deny the allegations contained in paragraph 10.3 of *Plaintiffs'*
Complaint for Damages.

10.4 Defendants deny the allegations contained in paragraph 10.4 of *Plaintiffs'*
Complaint for Damages.

XI. DAMAGES

11.1 Defendants deny the allegations contained in paragraph 11.1 of *Plaintiffs'*
Complaint for Damages.

11.2 Defendants deny the allegations contained in paragraph 11.2 of *Plaintiffs'*
Complaint for Damages.

11.3 Defendants deny the allegations contained in paragraph 11.3 of *Plaintiffs'*

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1 *Complaint for Damages.*

2 **AFFIRMATIVE DEFENSES**

3 By way of further answer and FIRST AFFIRMATIVE DEFENSE, Defendants
4 contend that Plaintiffs' damages, if any, were caused by, and should be reduced
5 proportionately based on Plaintiff's own fault, reckless or intentional behavior.

6 By way of further answer and SECOND AFFIRMATIVE DEFENSE, Defendants
7 contend that Plaintiffs' recovery for any alleged damages is barred to the extent Plaintiff
8 has failed to mitigate said damages.

9 By way of further answer and THIRD AFFIRMATIVE DEFENSE, Defendants
10 contend that Plaintiffs' claims are precluded by the doctrine of qualified immunity.

11 By way of further answer and FOURTH AFFIRMATIVE DEFENSE, Defendants
12 contend that Plaintiffs' recovery for any alleged damages is barred by Plaintiff's
13 commission of a felony.

14 By way of further answer and FIFTH AFFIRMATIVE DEFENSE, Defendants
15 contend that Plaintiffs' recovery for any alleged damages is barred by Plaintiff's
16 intoxication.

17 By way of further answer and SIXTH AFFIRMATIVE DEFENSE, Defendants
18 contend that the Plaintiff's damages, including medical expenses, must be reduced by the
19 doctrine of offset.

20 By way of further answer and SEVENTH AFFIRMATIVE DEFENSE, Defendants
21 contend that Plaintiff's injuries were caused or contributed to by provocation.

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DEFENDANTS' PRAYER FOR RELIEF

WHEREFORE Defendants pray that *Plaintiff's Complaint for Damages* be dismissed with prejudice and that Plaintiff take nothing. Defendants further pray that the Court find this matter frivolous and vexatious and impose sanctions including reasonable attorney's fees and costs as against Plaintiff under Fed R. Civ. P. 11, 28 USC §1927, 42 U.S.C. §1988, and the Court's inherent authority.

DEMAND FOR JURY

Pursuant to Fed. R. Civ. P. 38, Defendants hereby demand a jury of six or more persons.

RESPECTFULLY SUBMITTED this 16th day of February, 2012.

KEATING, BUCKLIN & McCORMACK, INC., P.S.

s/ Stewart A. Estes

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CERTIFICATE OF SERVICE

I certify under penalty of perjury of the laws of the State of Washington and the United States of America that I caused to be served a copy of Defendants' *Amended Answer to Plaintiff's Complaint for Damages*, with *Jury Demand* and *Certificate of Service*, on February 16, 2012 on the following party of record via Federal ECF:

Erik L. Bauer
The Law Office of Erik L. Bauer
215 Tacoma Avenue South
Tacoma, WA 98404
erik@erikbauerlaw.com
Attorneys for Plaintiffs

DATED this 16th day of February, 2012, at Seattle, Washington.

s/ Joan Hadley
Joan Hadley, Legal Assistant
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